

Mango Scented Sovereignty: Pakistan's Chief Justice Saqib Nisar and Baba-justice

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The Supreme Court's primary role is to shield citizens from the abuses of sovereign power, scribbled Alexander Hamilton in an essay with the clunky title [The Federalist No. 78](#). In itself, the Court possesses “neither FORCE nor WILL, but merely judgement”. Compared to the other two branches in the holy trinity of democratic design, the judiciary counted for “next to nothing”, America's founding father penned thoughtfully. The technical term of this modesty is known as judicial restraint.

Yet in the second half of the twentieth century, Hamilton's vision of a weak Supreme Court has been all but [burr-ed](#). In the United States and elsewhere, parliaments are finding it increasingly more difficult to establish a functional consensus to produce laws. In severely polarised and clogged legislatures law-making powers are silently shifting to the Courts instead. This has resulted in a heavy politicisation of the judiciary, the erstwhile noble branch that long operated with the rosy self-understanding to stand above politics.

Today one would be hard pressed to find a handful of people who regard Supreme Court justices as impartial automatons who shell out neutral judgements. Rather, justices are widely seen as political actors. In some cases they are altogether whipped as party stooges who in their judgements reliably unspool a rehearsed partisan script. All too often, the battle over laws is now fought in the judiciary and not in the legislature. A compelling by-product of this process has been that Court appointments are becoming highly [mediatised political events](#). Pakistan's Supreme Court is a particularly worrying example of this trend, one that resists a smooth folding into the concepts of judicial activism and transformative constitutionalism.

Let's look at what has been happening in Pakistan in the last couple of months. With an ad-campaign the Court is currently collecting donations for an ambitious dam project to resolve Pakistan's looming water crises. The call to action accessible on the [Court's webpage](#) encourages Pakistanis to “type ‘dam’ and send SMS to 8000 and an amount of Rs.10/- will be deducted for Supreme Court of Pakistan”. If you do as asked, you'll receive the following confirmation “Thank you for donating 10 Rupees for the dam. Your Supreme Court”. Roughly € 21m have been collected so far. This is a substantial sum. But it is nowhere close to the € 6-8 billion to see the dam project through.

The Supreme Court's chief justice, Saqib Nisar, a dainty 64-year old with neat golden-rimmed spectacles, first took notice of Pakistan's water crises when he received letters from worried citizens in Quetta. The groundwater level in their region had plummeted so low that Quettians were struggling to drench out even a few precious drops. To dig deeper into this matter, Saqib Nisar took one of his notorious *suo moto* actions, which means that he started acting on his own accord. Now he is running a fund to finance the dam.

When asked at a press conference if it was really the role of the judiciary to dabble into infrastructure project, Saqib Nisar [fired back](#) that "anyone opposing this effort is a traitor and an enemy of the state". The chief justice further silenced doubter by roaring that this dam was "a matter of survival". Nisar would certainly prefer, as he convincingly repeats, a more pliant courtly existence. But the catastrophic shortcomings of the executive and legislature force him to take on big infrastructure projects – these failures have also pushed him to sledgehammer into school curriculums, fees for private medical schools, pension of bank employees, random quality-checks in hospitals, surprise inspections of lower courts and ordering the arrest of a high ranking police officer for sharing indecent images of his estranged wife on Facebook, to name but a few very recent examples.

For good measure Nisar has also [torpedoed](#) the former prime minister Nawaz Sharif's cheeky attempt to enter politics through the backdoor in March and was the leading voice in ousting Sharif from power [last year](#). Sharif is now behind bars. He was also part of the Court in 2010, when it [thwarted](#) parliamentary efforts to recast the election procedure of Supreme Court justices. In the 2010 judgement, Nisar had championed a clean separation of powers and whenever accused of judicial overreach now, he likes to refer back to his ruling, as if to emphasise that he understands democracy's trinitarian character

Nisar also fends against big multinational corporations. Recently, he sloshed them with the blame for the water-shortage and for having paid precious little in return for pumping out the scarce resource. Big businesses was also just interested in hydrating the middle and upper classes, Nisar observed accurately. At roughly 50 Rupees a litre, bottled-water remains out of reach for poorer citizens. Taking the plight of the common man seriously, Saqib Nisar has decided to drink tap water only, though he acknowledged on further questioning that he has a servant boil the water first to clean it from harmful bacteria.

Nisar views himself as a man of the small people who has been put in a big chair. He believes that he has Pakistan to thank for it. As a token of his gratitude Nisar is now determined "to put the house in order". During a water-related confrontation with the Oxbridge-educated lawyer Aitzaz Ahsan, Saqib Nisar [sneered that](#) "if Pakistan had not been created, I would probably be working as your clerk".

There are however more dangerous transformations processes specific to Pakistan. One is that Nisar confuses transparency with [inviting TV crews](#) to accompany him on his 'inspections'. While there is a case to be made for pushing sluggish government workers out of office, justice can hardly be restored by humiliating government workers publicly. The other is Nisar's firm belief that the Supreme Court should strive to [emulate archaic village councils](#).

In village councils, Nisar outlined during a meeting with a lawyers association, there is always a *Baba* (elderly gentleman) who is respected by all and who takes the final decision. Disputes in village councils are rare, Nisar tells us, because of the integrity, respect and trust that everyone has in the *Baba*. The *Baba's* decisions are never tinted politically. Even the losing party would not level charges of dishonesty and conspiracy against the *Baba*.

"Nobody would say that the *Baba* is acting according to a sinister plan, or influenced by outside pressures", Nisar hedged. Yet his own Supreme Court has often been unfairly jumbled together with the army. "There is nobody who comes to me and tells me how to rule!", Nisar [thundered](#). And I do believe him. He has the demeanour of a man who means good. Yet the problem is not that someone is whispering orders in his ear to sway Supreme Court rulings. The problem is that nobody is stepping in to restrain him.

